

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID ARTHUR MORALES,

Plaintiff,

v.

CITY OF BELLINGHAM, *et al.*,

Defendants.

No. 2:19-cv-02078-RAJ

ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO
SUPPLEMENT RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Plaintiff's Motion for Leave to File Supplemental Response to Defendants' Motion for Summary Judgment. Dkt. # 29. Defendants oppose this motion. Dkt. # 31. For the reasons below, the Court **DENIES** this motion.

II. BACKGROUND

On Friday, January 6, 2017, Plaintiff David Arthur Morales ("Plaintiff") was arrested by Bellingham police officers following his encounter two days earlier with Bellingham parking enforcement officer Heidi Sande. Dkt. # 1 ¶¶ 4.1-4.7. Plaintiff spent two days in jail before appearing before a judge and was released on bail on Sunday,

1 January 8, 2017. *Id.* ¶¶ 4.12-4.13. The charges against Plaintiff were dismissed without
2 prejudice on April 14, 2017. *Id.* ¶ 4.14.

3 On December 23, 2019, Plaintiff filed this lawsuit against Defendants City of
4 Bellingham, a municipal corporation; Bellingham parking enforcement officer Heidi
5 Sande, her spouse, and marital community; and Bellingham police officers Joshua Danke,
6 Jeffery Yoder, Eric Kingery, and Kyle Nelson, and their respective spouses and marital
7 communities (collectively “Defendants”). *Id.* ¶¶ 3.1-3.7. Plaintiff seeks relief pursuant
8 to 42 U.S.C. § 1983 for his allegedly unlawful arrest and incarceration by the named
9 police officers and for the City of Bellingham’s failure to train and supervise its police
10 officers. *Id.* ¶¶ 5.2-6.8. He also seeks recovery under state negligence law for harm
11 suffered as a result of the allegedly negligent arrest and imprisonment. *Id.* ¶¶ 7.1-7.4.

12 On August 13, 2020, Defendants filed a motion for summary judgment with a
13 noting date of September 25, 2020. Dkt. # 16. On September 17, 2020, Plaintiff moved
14 the Court for leave to supplement his response to Defendants’ motion for summary
15 judgment, also with a noting date of September 25, 2020. Dkt. # 29. Defendants
16 opposed Plaintiff’s motion for leave to supplement his response after the deadline to file
17 his response. Dkt. # 31. Plaintiff filed a response to the motion for summary judgment
18 on September 21, 2020. Dkt. # 35.

19 III. DISCUSSION

20 Pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, “[u]nless a
21 different time is set by local rule or the court orders otherwise, a party may file a motion
22 for summary judgment at any time until 30 days after the close of all discovery.” If the
23 nonmoving party shows that “for specified reasons, it cannot present facts essential to
24 justify its opposition” the court may defer considering the motion, allow time to take
25 discovery, or issue any other appropriate order. Fed. R. Civ. Pro. 56(d). To succeed in
26 such a request, the nonmoving party must “identify the specific facts that further
27 discovery would have revealed or explain why those facts would have precluded

1 summary judgment.” *Tatum v. City & Cty. of San Francisco*, 441 F.3d 1090, 1100 (9th
2 Cir. 2006).

3 According to Local Rule 7(j), “[a] motion for relief from a deadline should,
4 whenever possible, be filed sufficiently in advance of the deadline to allow the court to
5 rule on the motion prior to the deadline,” unless the motion is based on a “true,
6 unforeseen emergency.” Local Rules W.D. Wash. LCR 7(j).

7 Here, Plaintiff filed the motion seeking leave to supplement his response to
8 Defendants’ motion for summary judgment a mere four days before the response was
9 due. Plaintiff’s failure to file the motion sufficiently in advance of the deadline is not
10 based on an alleged emergency and is not supported by any exigent circumstances. The
11 motion is therefore untimely.

12 Even if the Court were to consider Plaintiff’s request, Plaintiff has failed to
13 indicate that he is unable to present facts essential to justify his opposition as required by
14 Rule 56(d). He claims that he cannot respond fully to the motion for summary judgment
15 without obtaining Defendant Sande’s deposition transcript and without deposing her
16 supervisor, Sergeant Lanham. Dkt. # 30 at 2. He explains that, as Defendant Sande’s
17 supervisor in 2017, Sergeant Lanham “should be familiar with all the policies and
18 procedures affecting the parking enforcement officers, aware of what if anything would
19 make Defendant Sande’s actions lawful and what additional problems Defendant Sande
20 had with the public during his tenure.” Dkt. # 38 at 2-3.

21 Plaintiff, however, fails to explain why the information contained therein is
22 essential to his opposition. Plaintiff concedes that without Sergeant Lanham’s deposition
23 “it is difficult to know what he will provide.” Dkt. # 38 at 2. Defendants argue that
24 Sergeant Lanham was not involved in the investigation or arrest of Plaintiff—the issues
25 addressed in the motion for summary judgment—and is therefore unable to provide facts
26 necessary to Plaintiff’s response. Dkt. # 31 at 2. The Court agrees. Plaintiff’s
27 speculation on the information Sergeant Lanham might provide is insufficient to meet the

1 requirement of Rule 56(d). Based on this failure to identify facts that might preclude
2 summary judgment, the Court **DENIES** his motion.

3 **IV. CONCLUSION**

4 Based on the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Leave
5 to Supplement Response to Motion for Summary Judgment. Dkt. # 29.

6 DATED this 6th day of November, 2020.

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10 The Honorable Richard A. Jones
11 United States District Judge
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